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**U.S. Department of Homeland Security
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**U.S. Citizenship
and Immigration
Services**

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FILE: LIN 05 186 51529 Office: NEBRASKA SERVICE CENTER Date: JAN 10 2007

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

✓ Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner is currently a postdoctoral researcher at Montana State University (MSU), Bozeman. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the “prospective national benefit” [required of aliens seeking to qualify as “exceptional.”] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien’s past record justifies projections of future benefit to the national interest. The petitioner’s subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term “prospective” is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The petitioner describes his work:

Right after defending my PHD degree in May 2004, I got a wonderful opportunity to have joined the research group on adaptive optics simulation and modeling led by Dr. [REDACTED]

(Montana State University) and Dr. [REDACTED] (California Institute of Technology, Caltech). This is a collaboration . . . aiming at building fast and robust wave front reconstruction algorithms for adaptive optics systems on the under-planned 30-meter telescope . . . supported by [the] National Science Federation. . . .

What is adaptive optics?

. . . [W]hen starlight passes through [the] atmosphere and is finally collected by a ground-based telescope, its wave front will be distorted by atmospheric turbulence. . . . As a consequence, star images on a telescope get blurred. . . .

Adaptive optics is a technique to measure atmospheric turbulence in an order of millisecond and then use a deformable mirror/lens to straighten the distorted waive front. . . . This technique has [applications] also on the propagation of high-energy laser beam as a weapon for missile defense. . . .

My current research is to develop fast and robust control algorithms for the adaptive optics systems on a 30-meter telescope which is supported by US Air Force and National Science Foundation.

The petitioner asserts that his record of achievements, including several published articles, sets him apart from other researchers to an extent that justifies approval of the waiver. The petitioner states that, because some of his work is defense-related, he is limited in what he can do because he is not a United States citizen. We note, here, that the national interest waiver does not confer citizenship, nor does it expedite the naturalization process after one becomes a permanent resident.

Appointment letters in the record indicate that the petitioner's postdoctoral appointments at MSU are inherently temporary. The most recent letter indicates that the petitioner's appointment ended on May 12, 2005, several weeks before the petitioner filed the petition. A May 16, 2005 letter from an MSU official indicates that the university continues to employ the petitioner, but there is no indication as to whether or not the petitioner's current appointment is for a longer term than his two prior appointments of less than a year. The petitioner's current nonimmigrant status, valid until 2008, is sufficient for him to work in a short-term postdoctoral position. Because permanent immigration benefits are not required for this temporary work, it is not persuasive to argue that the petitioner should receive a waiver in order to continue his postdoctoral work. Rather, the decision must rest on consideration of the petitioner's prior achievements and the prospect of future accomplishments in the field.

The petitioner's initial submission includes several witness letters. We shall consider examples of these letters here. Professor [REDACTED] now Dean of the Graduate School at Clemson University, was previously the Chair of the Physics Department at Michigan Technical University while the petitioner was a doctoral student there. Prof. [REDACTED] asserts that the petitioner's "research has already gathered international attention. He has established a research trajectory that has the potential to become a world leader in his discipline." Professor [REDACTED] who supervises the petitioner's present postdoctoral work at MSU, states:

I sincerely believe that [the petitioner's] paper, entitled "Fourier domain preconditioned conjugate gradient algorithm for atmospheric tomography," will be viewed in the future as one of the seminal works in the field of adaptive optics. . . . [The petitioner's] recent work . . . eliminates what had been a "show-stopper" problem for extremely large optical telescopes. Without [the petitioner's] recent contribution, future 30-meter class telescopes simply would not be able to achieve the image quality that they are being design[ed] for. . . .

With additional knowledge of MEMS [Micro-Electro-Mechanical Systems] that he is now acquiring, [the petitioner] will position himself as one of the foremost experts in the world on deformable mirror technology.

Dr. [REDACTED] Adaptive Optics Group Manager for the Thirty Meter Telescope Project, states:

The advanced wave-front reconstruction methods which [the petitioner] has recently developed . . . promise to be an essential breakthrough in the development of robust and practical adaptive optics control algorithms for the TMT project and other extremely large telescopes. . . .

[The petitioner's] work focuses on tomographic wave-front reconstruction, an area of intense international activity. It is widely believed that work in this area will enable the next revolution in ground-based telescopes for astronomy. . . . The key to the development of adaptive optics for giant telescopes is the invention of methods for rapid, robust, and accurate wave-front reconstruction. It is in this area that [the petitioner] has already had important contributions.

Other university faculty who have participated in the petitioner's professional training indicate that they are impressed with the petitioner's progress and abilities.

Two of the initial witnesses claim no personal or collaborative ties to the petitioner. [REDACTED]
president of the [REDACTED] Company, states:

I have no personal ties to [the petitioner]. I came to know him in person at an academic workshop in adaptive optics. He is an extraordinary research scientist in the field of adaptive optics, and his name is widely known in our field. . . .

[The petitioner] is among the few best scientists in the world who have done extensive and detailed research on both instruments and fast algorithms for adaptive optics. He has made significant contributions to this field by achieving a series of exciting and groundbreaking results, which have greatly expanded scientific knowledge in this area. . . .

Recently, [the petitioner] obtained some of his most exciting results to date. He introduced the Fourier domain preconditioned conjugate gradient algorithm for atmospheric tomography. . . . [which] is hundreds [of] times faster and requires much less computer memory usage than existing techniques.

Dr. [REDACTED] senior research scientist at [REDACTED] states:

[The petitioner] has made significant contributions in the fields of wavefront reconstruction and deformable mirrors. . . .

[The petitioner] is a leading research scientist and an emerging expert in MCAO [multi-conjugate adaptive optics], extreme adaptive optics (ExAO), and the fabrication and modeling of deformable mirrors. . . .

In the past year, [the petitioner] developed a new algorithm to speed up wavefront reconstruction for atmospheric tomography. This technique will provide great convenience

for scientists to evaluate the performance of adaptive optics systems on extremely large telescopes, and it makes possible the implementation of a real MCAO system for a 30-meter class telescope.

The last two letters indicate achievements and a reputation beyond the petitioner's own circle of collaborators and mentors. The independent witnesses do not merely offer vague, general praise for the petitioner's promise or potential, nor do they merely assert that the petitioner's specialty is in need of talented workers; they describe specific accomplishments and explain the importance thereof.

On June 23, 2005, the director issued a request for evidence, instructing the petitioner to submit further documentation to meet the guidelines set forth in *Matter of New York State Dept. of Transportation*. The director requested objective evidence of the petitioner's influence on his field. In response, the petitioner submits materials relating to the petitioner's publications and grant funding, as well as new witness letters.

a technical manager at the National Optical Astronomy Observatory who has "never worked with, nor collaborated with" the petitioner, states:

In one of science's truly cutting-edge fields, [the petitioner] has proven himself to be among the most creative and insightful researchers. . . . To date, he has created one of the best algorithms in the field for extreme large telescopes. . . . His recent research on the modeling of deformable mirrors also provides the possibility of open-loop control of adaptive optics systems, thereby increasing the bandwidth of the systems dramatically. This discovery of a new control algorithm establishes that [the petitioner's] novel findings have already made an impressive impact on this field of research.

The petitioner submits a list of individuals and institutions that have downloaded a copy of one of the petitioner's articles, but wide dissemination is the very essence of publication. Evidence that others have read the petitioner's published work does not, itself, demonstrate the extent to which that work has influenced the subsequent work of those who read the article.

The director denied the petition on September 30, 2005, acknowledging the intrinsic merit and national scope of the petitioner's occupation but finding that the petitioner had not demonstrated that it would be contrary to the national interest to hold the petitioner to the job offer/labor certification requirement that normally attaches to the classification that the petitioner has chosen to seek. The director found that the petitioner had failed to provide sufficient objective evidence that sets the petitioner apart from others in his specialty to an extent that would justify a waiver of the statutory job offer requirement. The director asserted that the petitioner had not established a reputation outside of his own circle of mentors and collaborators.

On appeal, counsel observes that the petitioner had submitted "advisory opinions from independent, objective reviewers of Petitioner/Appellant's work who . . . find his work to be of the very high quality, significance, and impact." Four new witness letters accompany the appeal. Dr. [REDACTED] Associate Director for Development at Gemini Observatory, states:

While I have not worked with [the petitioner] directly, the adaptive optics (AO) technology he has helped develop has been strategically very important to the Gemini Observatory and has helped keep Gemini at the forefront of modern astronomical research in the world. . . . We rely heavily on the sort of AO technology that [the petitioner] has helped develop to achieve our science mission. . . . This AO technology was substantially spearheaded by a team at the University of Hawaii, for which I understand [the petitioner] is a major player.

We note that the petitioner has never been employed at the University of Hawaii, but he had collaborated with researchers there in designing systems for the Gemini Observatory. Dr. [REDACTED] an Assistant Astronomer at the University of Hawaii's Institute for Astronomy, is one of those collaborators. Dr. [REDACTED] states that the petitioner's "contribution greatly increased our understanding of how these [adaptive optics] systems operate and how their performance can be optimized."

Dr. [REDACTED] a Research Officer at the Herzberg Institute of Astrophysics in Canada, asserts that the petitioner "has become a well-recognized member of our research community" whose "work has led to significant advances for development of the next generation of ground-based telescopes."

The last witness is Dr. [REDACTED] of the Eastern Southern Observatory in Germany, who states: "I have no personal ties with [the petitioner] and base my commentary on what I have learned from his publications and conference presentations." Much of Dr. [REDACTED]'s letter appears to have been copied from [REDACTED] earlier letter; the two letters contain nearly identical passages. This somewhat diminishes the evidentiary weight of the letter, but Dr. [REDACTED]'s support of the petition corroborates earlier assertions that the petitioner has earned an international reputation through his work.

The petitioner has established that he is not only a competent professional, but also a valued innovator who has made specific, significant contributions that have advanced progress in the field on a national, even international, scale. It is certainly possible to imagine stronger evidence in support of this petition, but the materials provided by the petitioner suffice to meet the preponderance of evidence standard necessary to warrant approval.

It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of research, rather than on the merits of the individual alien. That being said, the evidence in the record establishes that the engineering community recognizes the significance of this petitioner's research rather than simply the general area of research. The benefit of retaining this alien's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.